



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
SUITE 310
625 SILVER AVENUE, S.W.
ALBUQUERQUE, NEW MEXICO 87102

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In Reply Refer To:

June 2, 1992

CERTIFIED RETURN RECEIPT
NO. P 965 799 280

Mr. Lowell P. Braxton
Associate Director, Mining
Division of Oil, Gas and Mining
3 Triad Center, Suite 350
355 West North Temple
Salt Lake City, Utah 84180

RECEIVED

JUN 04 1992

DIVISION OF
OIL GAS & MINING

Re: Division of Oil, Gas and Mining Response to Ten-Day Notice (TDN) 92-02-352-003 TV 1, Bear Canyon Mine

Dear Mr. Braxton:

The Albuquerque Field Office (AFO) received DOGM's second response to the above referenced TDN on May 26, 1992. AFO has reviewed both of DOGM's responses and in accordance with 30 CFR 842.11 renders the following written finding.

The TDN contains one alleged violation as follows:

"Failure to provide cross sections of diversions. All diversions except D-1D, D-2D, D-7D."

The regulation believed violated is R645-301-722.200. There are approximately 18 diversion structures for which no cross-sections exist.

DOGM's initial response of April 22, 1992, appears to assert that the cited regulation only requires maps to show the location of the diversions and that narrative descriptions of the diversions in the permit supplements the map requirement. DOGM's second response, however, identifies the cited regulation as requiring cross-sections, but again defers to tabular data in the permit as meeting the requirements of the regulations.

DOGM's response, on more than one occasion, espouses the merits of tabular data over the required cross-sections stating, for example, "The tabularized data in the Bear Canyon MRP, cited above, provide as accurate an illustration of anticipated field performance as is provided by a 'typical' cross section * * *."

A review of this tabulated data, however, reveals a somewhat different perspective. For instance, at page 7-87 the side slopes of the diversions are listed as being given in percentages (%), 1.5, 2.0, 1.8, etc. However, given the top width and depth of the diversions, the side slopes with the percentages listed above would be impossible to construct. It is believed that a Horizontal to Vertical ratio (1.5:1;2.0:1; etc.) was intended but that is not what is depicted by the tabular data. Also, page 7-88 references the reader to Appendix 7-G regarding channel characteristics. The Appendix identifies numerous diversions as being of the Trapezoidal configuration. However, upon closer examination of the bottom width and side slope measurements a "V" ditch configuration is derived. This type of confusing and inaccurate information could have been averted through the illustrative nature of the required cross-sections.

Finally, cross-sections for diversion are required to be certified. I refer you to R645-301-712, 301-512.100, and 512.140 for your review and, as necessary, implementation.

DOGM has verified that R645-301-722.200 requires cross-sections for diversion structures. DOGM has also verified that cross sections do not exist for the diversions located on the Bear Canyon Mine with the exception of the three listed in the TDN. The permit data that DOGM contends meets the requirements of the cited regulation was found to be confusing and, in some instances, inaccurate. DOGM has not proposed any corrective action to bring the permit into compliance with the requirements of the approved Utah program.

DOGM's failure to compel compliance, either through permit revision or enforcement, constitutes an arbitrary and capricious response and is, therefore, inappropriate. If you disagree with this finding, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A).

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Hagen", with a long horizontal flourish extending to the right.

Robert H. Hagen, Director
Acting Albuquerque Field Office